

**Montana Department of Revenue
Major Case Decisions
September 2006 - June 2007**

District Court:

Omimex: First Judicial District Court Judge Sherlock entered findings of fact, conclusions, of law and order in favor of the Department on February 2, 2007. Omimex challenged the Department's authority to centrally assess its property because it claimed the central assessment statute only gives the Department authority to centrally assess properties that are physically interconnected. Omimex also challenged the Department's central assessment of its property on equalization and equal protection grounds.

Saga Petroleum: Judge Honzel denied Saga's Motion to Alter or Amend Judgment on October 12, 2006, affirming its original decision granting summary judgment in favor of the Department. Judge Honzel determined that Saga was not the proper taxpayer to bring a property tax challenge when Saga purchased the subject property mid-year.

U.S. West, Inc.: This case involved interest added to an assessment of corporation license taxes for 1999 which the taxpayer appealed to the State Tax Appeal Board. STAB ruled in the Department's favor in September 2006 and the taxpayer appealed to the First Judicial District Court. The district court affirmed STAB's findings stating that the interest owed by the taxpayer was due as calculated by the Department.

Fulton Producing Company: This case involves breach of contract claims as to tax delinquencies owed to the state of Montana and various counties and a tort claim filed by the state relating to transfer of real and personal property in a scheme to avoid tax collection. The First Judicial District Court ruled the Department has authority to bring the tort claims action and if certain requirements are met damages may be warranted to the state for the tort actions.

Klabzuba Oil & Gas, Inc.: The Department issued an administrative summons for information that Klabzuba has refused to provide. Klabzuba sought to quash the summons in District Court (Havre). Klabzuba moved to dismiss and for summary judgment. On April 5, 2007, Judge Rice denied Klabzuba's motions with some language favorable to the Department.

Shelby Distributors: This is a liquor case that revolved around whether or not a liquor wholesaler could have "any financial interest" in a liquor retail establishment. On May 1, 2007, the district court also ruled in favor of the Department stating that a liquor wholesaler could have no direct or indirect financial interest in a retailer.

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Frontier Chevrolet: Frontier appealed the State Tax Appeal Board's (STAB) decision to the Thirteenth Judicial District Court claiming STAB's interpretation of 15-31-544, MCA was not correct. Judge Gustafson ruled that STAB had correctly interpreted the statute and Frontier had a duty to file an amended return with the Department as a result of an adjustments made by the IRS to the federal tax returns for the same tax years.

Barretts Minerals, Inc.: This case involves whether Barretts was a unitary business between 1993 and 2002 and should have been taxed accordingly. Barretts filed a District Court action seeking to have a master appointed to review the Department's requests for production of documents. Barretts has claimed proprietary or confidential status of those records. The Department's motion to dismiss because Barretts' administrative remedies have not been exhausted was granted by Judge Sherlock on June 18, 2007.

State Tax Appeal Board (STAB):

Thompson River Co-Gen (TRC): TRC appealed the Department's determination of value for tax year 2005 at \$18.9 million to Sanders County Tax Appeal Board. CTAB found in the Department's favor and did not alter the value determination. TRC appealed to STAB, claiming a value of \$5.2 million. Further, the Department classified TRC as class 13 property, and TRC sought classification as class 4 and class 8. On May 2, 2007, STAB upheld the Department's methodology for determining value (cost approach in this instance), but adjusted the value downward \$1.5 million (for TRC to become compliant with DEQ emissions standards). STAB also found that the Department properly classified the property as class 13.

PacifiCorp: On October 11, 2006, the State Tax Appeal Board denied PacifiCorp's Motion in Limine, which sought the exclusion of certain "post-lien date" sales information from the October 30, 2006 trial. The Department was able to introduce such information during the trial.

Gannett Satellite Information Network, Inc. (Gannett): A motion for summary judgment was filed by Gannett and the Department opposed that motion and filed a motion for partial summary judgment. The State Tax Appeal Board ruled in the Department's favor on all counts: equitable estoppel; the definition of business income (15-31-302(1), MCA; and unitary taxation. The case is significant because it establishes that both transactional and functional tests may be used to determine if a property is unitary.

Northwest Farm Credit Services (Northwest): In November, 2006, the State Tax Appeal Board ruled in favor of the Department stating that because Northwest failed to timely file an amended Montana return at the time it filed amended

federal returns as required by 15-31-506, MCA, the Department may assess tax liability as provided by 15-31-544, MCA.

Douglas Hadnot: This case involves a taxpayer whose land had previously been classified as non-qualified agricultural land. Following the adoption of rules relating to non-qualified agricultural land, the Department determined that Mr. Hadnot's property did not meet the production requirements for non-qualified agricultural status. Mr. Hadnot appealed to the State Tax Appeal Board. The Board held that the Department's rule was arbitrary and ordered that Mr. Hadnot's property be classified as non-qualified agricultural land.

Tobacco Tax: Suzie Sneed and Dianne Shultz: These are the first two tobacco tax decisions from STAB. Sneed was decided January 4, 2007, and Shultz was decided May 9, 2007. Both uphold the Department's implementation of the tobacco tax code (Title 16, Chapter 11, part 1, MCA), as far as the Department issuing tax assessments to Montana citizens for purchases of tobacco products over the internet or through the mail.

Office of Dispute Resolution (ODR):

Lucky Last Jump (LLJ): LLJ moved to dismiss the Department's liquor license revocation proceeding on numerous grounds, one of which was that the annexation in Great Falls of the airport was flawed, such that LLJ was beyond the 5-mile boundary around the city limits (thus qualifying for a county license). The Department argued that determining the validity of an annexation performed in 1994 was beyond the scope of the Hearing Examiner's authority. On October 20, 2006, the Hearing Examiner disagreed with all of LLJ's grounds for dismissal and denied LLJ's motion.

City of Baker (City): The city of Baker owns and operates a natural gas well. The Department sought to tax production from the well under the Oil and gas Production Tax statutes (Title 15, Chapter 36, part 3, MCA). The City argued that it's property (and thus the well production) is exempt under 15-6-201(1)(a)(ii), MCA. On January 12, 2007, the Hearing Examiner found in the Department's favor.